



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 11, 1995

Ms. Debra Weinberg
Police Legal Advisor
City of Plano Police Department
P.O. Box 860358
Plano, Texas 75074

OR95-935

Dear Ms. Weinberg:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34888.

The City of Plano Police Department received a request for the following information: 1) "copies of records or communication tapes regarding the Ashley Estell murder investigation in 1993," 2) "the personnel files of former Plano identification technician Daniel Rhodes," and 3) "any internal affairs investigation files concerning Mr. Rhodes and his former supervisor, Ben Armstrong."

We note that you informed the requestor that the police department no longer had possession of the requested personnel file. You informed the requestor to direct her request for that information to the city's Human Resources Department. As the ten day deadline has passed and the city has raised no arguments for exception from public disclosure, we assume that except for information that may be confidential by law¹ this information has been released to the requestor. See Gov't Code §§ 552.301, .302.

You contend that the communication tapes and information relating to internal affairs investigations are excepted from required public disclosure under section 552.103. To be excepted under section 552.103(a), information must relate to litigation that is pending or reasonably anticipated. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In this instance, you have demonstrated that litigation is reasonably anticipated. In addition, the requested information relates to that litigation with the

¹We have enclosed a list of the most common confidentiality laws. This list is not exhaustive of the type of information that may be confidential by law.

following exceptions. We do not believe the tape made on September 5, 1993, relates to anticipated litigation. Furthermore, we do not believe the September 10th tape is responsive to the request. It is labeled as "15-1530 hours." The requestor seeks the tape recorded on September 10, 1995, for the period 9:20 p.m. through 10 a.m. We also note that the September 10th tape is unintelligible.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay H. Guajardo
Assistant Attorney General
Open Records Division

KHG/LBC/rho

Ref: ID# 34888

Enclosures: Submitted documents
Confidentiality list

cc: Ms. Denise McVea
Staff Writer
Dallas Observer
P.O. Box 190289
Dallas, Texas 75219
(w/o submitted documents)

²If the opposing parties in the litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). Finally, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

PLEASE NOTE THAT THE RECORDS SUBMITTED TO THIS OFFICE FOR REVIEW MAY CONTAIN INFORMATION DEEMED CONFIDENTIAL BY LAWS NOT ADDRESSED IN THE ATTACHED LETTER RULING. YOU SHOULD THOROUGHLY EXAMINE THE RECORDS AT ISSUE TO DETERMINE WHETHER ANY OF THE PROVISIONS LISTED BELOW APPLY TO INFORMATION IN THESE RECORDS THAT MUST BE WITHHELD IN ACCORDANCE WITH STATE OR FEDERAL LAW.

WE CAUTION THAT THIS IS NOT AN EXCLUSIVE LIST OF CONFIDENTIALITY PROVISIONS AND TYPES OF INFORMATION PROTECTED FROM DISCLOSURE BY COMMON-LAW PRIVACY. THE LIST INCLUDES ONLY THOSE STATUTORY CONFIDENTIALITY PROVISIONS THAT FREQUENTLY AFFECT REQUESTS FOR RECORDS. IF YOU HAVE ANY QUESTIONS REGARDING THE APPLICABILITY OF THESE OR ANY OTHER CONFIDENTIALITY PROVISIONS, PLEASE CONSULT YOUR AGENCY ATTORNEY, WHO WILL BE MOST FAMILIAR WITH PROVISIONS THAT DIRECTLY AFFECT YOUR AGENCY.

**COMMON TYPES OF INFORMATION DEEMED
CONFIDENTIAL UNDER COMMON-LAW PRIVACY**
(NOTE: RIGHT OF PRIVACY LAPSES UPON DEATH)

- ☐ Information revealing details of sexual assault. Open Records Decision Nos. 440 (1986), 339 (1982).
- ☐ Prescribed drugs a person is taking. Open Records Decision No. 455 (1987).
- ☐ Information regarding drug overdoses, *acute* alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress. Open Records Decision No. 343 (1982).
- ☐ Results of psychological and IQ tests. Open Records Decision No. 600 (1992).
- ☐ Personal financial information, *e.g.*, mortgage payments, assets, bills, credit history. Open Records Decision Nos. 545 (1990), 373 (1983). *Note: Present and past salaries of public employees and applicants for public employment are not confidential.*
- ☐ Information regarding an employee's participation in a deferred compensation plan, including whether or not an employee is participating, and certain information regarding insurance, such as choice of carrier and optional coverages. Open Records Decision Nos. 600 (1992), 545 (1990).
- ☐ Allegations of sexual harassment -- If there is a clear summary of the allegations, the summary must be released but the identities of victims and witnesses must be redacted from the summary and their detailed statements must be withheld from disclosure. *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). If no summary exists, detailed statements regarding the allegations must be released but identities of the witnesses and victims must be redacted from those statements.

**INFORMATION COMMONLY PROTECTED BY
STATUTORY CONFIDENTIALITY**

- ☐ Medical records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are *created or maintained by a physician*." V.T.C.S. art. 4495b, § 5.08(b).
- ☐ The federal Americans With Disabilities Act (the "ADA", 42 U.S.C. §§ 12101 - 12213, may apply to employee and applicant medical information obtained by a governmental body. The ADA provides that information regarding the medical condition or history of an applicant or employee must be treated as a confidential medical record. *Id.* § 12112(c)(3)(B), (4)(C).
- ☐ Mental health records -- "Records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained" by a mental health professional. Health & Safety Code § 611.002.
- ☐ EMS records -- "Records of the identity, evaluation, or treatment of a patient" created or maintained by EMS personnel. Health & Safety Code § 773.091.
- ☐ Polygraph examination results -- Any "information acquired from a polygraph exam." V.T.C.S. art. 4413(29cc), § 19A.
- ☐ Home addresses and telephone numbers of public employees and former employees who have elected, *prior to the current open records request*, to restrict access to this information in compliance with Gov't Code § 552.024(b).
- ☐ Home addresses and telephone numbers of peace officers. Gov't Code § 552.024.
- ☐ Criminal history information -- All TCIC and NCIC information; other compilations of an individual's criminal history *except for offense for which individual is currently under the supervision of criminal justice system*.
- ☐ Records of juvenile offenders -- Fam. Code § 51.14.
- ☐ Records relating to reports of child abuse -- Fam. Code § 34.08.
- ☐ Social security numbers -- confidential only if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law that was enacted on or after October 1, 1990. 42 U.S.C. section 405(c)(2)(C)(viii)(I); see Open Records Decision No. 622 (1994).
- ☐ Student records -- confidential only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). Therefore, governmental bodies must withhold from education records only that information tending to identify a particular student. "Directory information," as defined at 20 U.S.C. § 1232g(a)(5)(A), must be released in its entirety.